

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

TAVON HILTON, #1539859,

Petitioner,

v.

ACTION NO. 2:16cv135

DIRECTOR OF THE DEPARTMENT OF
CORRECTION,

Respondent.

FINAL ORDER

Petitioner, a Virginia inmate, submitted a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. Petitioner alleges the state violated his federal rights under the Double Jeopardy Clause of the Fifth Amendment when, after his first prosecution ended in a mistrial, he was subjected to a second prosecution for the same offenses. Following the second prosecution, petitioner was convicted on December 17, 2014 in the Circuit Court for Henrico County of robbery, attempted robbery, carjacking, attempted malicious wounding, and four counts of use of a firearm in the commission of a felony. As a result of the convictions, petitioner was sentenced to serve 63 years in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report and recommendation, filed December 7, 2016, recommends that respondent's motion to dismiss, ECF No. 5, be granted, and the petition for a writ of habeas corpus, ECF No. 1, be denied and dismissed with prejudice.


Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On December 22, 2016, the Court received petitioner's objections to the report and recommendation. ECF No. 12.

The Court, having reviewed the record and examined the objections filed by petitioner to the report and recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the report and recommendation. It is, therefore, ORDERED that respondent's motion to dismiss, ECF No. 5, be granted, and the petition for a writ of habeas corpus, ECF No. 1, be denied and dismissed with prejudice. It is further ORDERED that judgment be entered in favor of respondent.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," and therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within 30 days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to petitioner and counsel of record for respondent.

/s/ 
Mark S. Davis
United States District Judge

Mark S. Davis
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
February 16, 2017